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LEGAL ALERT

Legal Alert: Sixth Circuit Clarifies Employee's Burden of Proof for ADA Association Discrimination Claim Under the Distraction Theory

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Executive Summary: The Sixth Circuit Court of Appeals recently affirmed the decision of a lower court holding that a plaintiff was not entitled to trial on his associational disability claim under the Americans with Disabilities Act (ADA) because he could not establish that he was terminated because of his association with his disabled wife. *See Stansberry v. Air Wisconsin Airlines Corp.* (July 6, 2011). The Court's decision clarifies what a plaintiff must show to prove a "distraction" theory claim under the ADA.

Background

Eugene Stansberry managed Air Wisconsin's operation at the Kalamazoo Airport from 1999 through July 2007. For a variety of performance reasons, Stansberry's employment was terminated at the end of July 2007. After his discharge, Stansberry sued, alleging his termination was a violation of the ADA. He claimed he suffered job discrimination because of his association with a disabled person (his wife). The trial court granted summary judgment to Air Wisconsin and dismissed Stansberry's lawsuit because Stansberry failed to establish an associational disability cause of action. Stansberry appealed the trial court ruling, but the Court of Appeals affirmed the dismissal.

ADA's Associational Protections

An infrequently litigated provision of the ADA prohibits "excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association." 42 U.S.C. § 12112(b)(4) (2006). Importantly, non-disabled workers are not entitled to reasonable accommodation under this provision. Under this association discrimination provision, there are three theories: (1) expense; (2) disability by association; and (3) distraction. For the first time, setting forth the *prima facie* case for a distraction theory claim, the Sixth Circuit held that a plaintiff must prove: (1) he is qualified for the position; (2) he was subjected to an adverse employment action; (3) he was known to be associated with a disabled individual; and (4) the adverse action occurred under circumstances that raise a reasonable inference that the disability of the relative was a determining factor in the decision.

While Stansberry met the first three prongs, the Court held that he failed to establish the fourth prong. Principal to his claim, Stansberry asserted that a jury could infer that he was terminated "on account of his wife's disability because he was discharged shortly after her condition worsened." As the Court noted, "however, his performance grew remarkably worse in the time leading up to his termination." Stansberry failed to produce evidence refuting Air Wisconsin's reasons or present evidence of any pretext.

The significance of the Court's holding lies in its narrow interpretation of the fourth prong. "Importantly, while Stansberry's poor performance at work was due to his wife's illness, that is irrelevant under this provision of the Act. Stansberry was not entitled to a reasonable accommodation on account of his wife's disability. Therefore, because his discharge was based on actually performing his job unsatisfactorily, and not fears that his wife's disability might prevent him from performing adequately," his termination was not discrimination.

Employers' Bottom Line

The Sixth Circuit's decision in *Stansberry* finally articulates the parameters of "distraction" theory discrimination under the ADA's association protections. Significantly, it does so without creating a windfall for plaintiffs. As employers are reeling from the ADA's sweeping amendments and the EEOC's expansive regulations (neither of which affect Section 12112(b)(4)), *Stansberry* ensures that this movement will not extend to associates of a disabled person. While an employee may very well be distracted at work because of concerns over a disabled relative, that employee will not be insulated from discipline for his actual poor performance simply because of his association with his relative. Employers considering taking an adverse employment action against an employee whose performance has declined because of caring for a disabled relative must make sure that the basis for this decision is poor performance, rather than anticipation that the employee's performance will be poor in the future.

If you have any questions regarding this decision, please contact the author of this Alert, Blake Martin, bmartin@fordharrison.com, an attorney in our Atlanta office, who represented Air Wisconsin in preparing its Appellate Court brief. Ford & Harrison attorneys Chad Shultz, cshultz@fordharrison.com, and Raanon Gal, rgal@fordharrison.com, represented Air Wisconsin at the trial court level and at oral argument before the Sixth Circuit.